

## PUBLIC UTILITIES COMMISSION

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TO PARTIES OF RECORD IN RULEMAKING 06-06-028

This is the proposed decision of Commissioner Chong. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Pulsifer at [trp@cpuc.ca.gov](mailto:trp@cpuc.ca.gov) and Commissioner Chong's advisor Robert Haga at [rwh@cpuc.ca.gov](mailto:rwh@cpuc.ca.gov). The current service list for this proceeding is available on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

/s/ ANGELA K. MINKINAngela K. Minkin, Chief  
Administrative Law Judge

ANG:avs

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER CHONG**  
**(Mailed 11/20/2007)**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking into the Review of  
the California High Cost Fund B Program.

Rulemaking 06-06-028  
(Filed June 29, 2006)

**INTERIM OPINION IMPLEMENTING  
CALIFORNIA ADVANCED SERVICES FUND**

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## **INTERIM OPINION IMPLEMENTING CALIFORNIA ADVANCED SERVICES FUND**

### **1. Introduction**

In today's decision, we continue implementation of reforms in the California High Cost Fund-B (CHCF-B or B-Fund) program, building on the initiatives begun in Decision (D.) 07-09-020. Pursuant to Public Utilities Code § 739.3, the CHCF-B program is part of a broader framework to meet universal telephone service goals throughout California.<sup>1</sup> As our next priority, as discussed in D. 07-09-020, we hereby allocate funding to encourage deployment of broadband facilities for use in provisioning advanced telecommunications (as well as voice) service in unserved and underserved high cost areas of California. We designate this allocation of money as the "California Advanced Services Fund" (CASF), to be awarded as explained below.

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<sup>1</sup> The CHCF-B program supports "universal service" goals by ensuring that basic telephone service remains affordable in high cost areas within the service territories of the major incumbent local exchange carriers (ILECs).

As implemented by today's order, the CASF will serve as a valuable tool to spur deployment of broadband infrastructure in unserved and underserved high cost areas of the state. Broadband infrastructure is critical to the economic health and welfare of the state and its citizens.<sup>2</sup> Broadband deployment will be a key measure of success in our information economy and is crucial to future productivity growth of the State. California is home to the leading centers for entertainment and high technology. We cannot and should not wait for a national solution to alter the downward trend of the United States' ranking for broadband availability.<sup>3</sup> Ubiquitous deployment of broadband is widely regarded as holding tremendous opportunities for consumers, technology providers, and content providers.

Basic telephone service is being provided on an ever increasing basis via broadband technologies, in addition to wireless and satellite technologies. Telecommunications service and usage patterns have been shifting for some time as consumers switch voice calls from traditional landline phones to wireless and VoIP networks. The number of wired telephone lines has been dropping

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<sup>2</sup> Pub. Util. Code § 709, Executive Order S-23-06 of Governor Arnold Schwarzenegger, Telecommunications Act of 1996, Pub. L. 104-104, Feb. 8, 1996, 110 Stat. 56, at § 706, 47 U.S.C. § 157, *Connecting California*, California Public Utilities Commission Telecommunication Division Broadband Report Update, September 20, 2006, *The Effects of Broadband Deployment on Output and Employment: A Cross-sectional Analysis of U.S. Data*, by Robert Crandall, William Lehr and Robert Litan, The Brookings Institution, Issues in Economic Policy, July 2007, Broadband for All? Gaps in California's Broadband Adoption and Availability, Public Policy Institute of California, rel. July 10, 2007.

<sup>3</sup> The United States is ranked 15<sup>th</sup> in broadband subscribers per 100 inhabitants, Organization for Economic Co-operation and Development (OECD) Broadband Statistics to December 2006, rel. April 2007, available at <http://www.oecd.org/sti/ict/broadband>.

between 3% to 5% for several years,<sup>4</sup> while the number of wireless and VoIP lines have increased. Nearly 77% of Americans were wireless phone subscribers by the close of 2006,<sup>5</sup> and 12.8% had only wireless telephones in 2006,<sup>6</sup> and millions of businesses, schools, banks and government offices are projected to migrate from legacy services to broadband services over the next five years. In California, the number of landlines decreased by 2.39 million from end-of-year 2001 to June 2006, while the number of wireless subscribers in California increased by 13.34 million to 27.52 million,<sup>7</sup> and the number of advanced service subscribers increased by 7.76 million.<sup>8</sup>

The shift in communication volumes from fixed wireline phone service to wireless and VoIP services has been rapid and dynamic as users became used to the convenience and mobility advantages of wireless, bundled long distance and local calling plans, and the very low domestic and international calling rates (sometimes offered free) of VoIP. The average U.S. wireline toll minutes of use

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<sup>4</sup> Federal Communications Commission *Trends in Telephone Service* at Table 7.4, rel. Feb. 9, 2007.

<sup>5</sup> CTIA's Wireless Industry Indices: 1985 - 2006.

<sup>6</sup> Center for Disease Control, *Wireless Substitution: Early Release of Estimates Based on Data From the National Health Interview Survey*, rel. May 2007.

<sup>7</sup> Local Telephone Competition: Status as of June 30, 2006, Federal Communications Commission, Industry Analysis and Technology Division, Wireline Competition Bureau, January 2007, downloaded from [http://fjallfoss.fcc.gov/edocs\\_public/attachmatch/DOC-270133A1.pdf](http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-270133A1.pdf), Tables 9 (CLEC Lines), 10 (ILEC lines), and 14 (wireless).

<sup>8</sup> High-Speed Services for Internet Access: Status as of June 30, 2006, Federal Communications Commission, Industry Analysis and Technology Division, Wireline Competition Bureau, January 2007, downloaded from [http://fjallfoss.fcc.gov/edocs\\_public/attachmatch/DOC-270128A1.pdf](http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-270128A1.pdf), Table 10.

(MOUs) have dropped almost 30% since 2000,<sup>9</sup> while U.S. wireless interstate MOUs per user grew more than 25% during the same period. The percentage of interstate minutes has increased from 16 percent to 28% of all wireless minutes.<sup>10</sup> These changes in calling patterns are reflected in ILEC line losses.

Telecommunication services are starting to migrate to broadband because of the greater flexibility, efficiency and redundancy that can be achieved. In other words, in a broadband environment, telephone service is simply one of many data streams flowing over the broadband connection.<sup>11</sup> In URF, we noted the historic practice of finding that each telecommunications service constitutes a separate “market” is no longer a relevant factor for analyzing or explaining the dynamics of today’s technologically diverse voice communications environment.<sup>12</sup> Instead, we found that the voice market today consists of a rich mix of wireline telephony, wireless telephony, voice over Internet protocol (VoIP), and satellite voice offerings.

Accordingly, it would be imprudent to continue to only support legacy copper networks of incumbent local exchange carriers through the universal service programs due to the fact that basic voice telephone service is being provided on an increasing basis using advanced technologies such as VoIP and

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<sup>9</sup> Federal Communications Commission *Trends in Telephone Service* at Table 10.2, rel. Feb. 9, 2007.

<sup>10</sup> Federal Communications Commission *Trends in Telephone Service* at Table 11.4, rel. Feb. 9, 2007.

<sup>11</sup> See, e.g., New Zealand Telecommunications Service Obligations Regulatory Framework – Ministry of Economic Development Discussion Document at §5.4 (August 2007) (Requesting comment on the obligations of Telecom New Zealand will be after it converts to an all broadband network within the next five years).

<sup>12</sup> D.06-08-030, *mimeo.* at 264, COL 15.



wireless technologies including broadband systems.<sup>13</sup> Limiting universal service support to particular technologies skews competitive forces, and in some cases, may even prevent consumers in high cost areas from ever receiving advanced communication services and the economic and social benefits that flow from such services. This Commission must recognize and incorporate new technologies as it administers its universal service obligations so that we can continue to meet the goals of the Legislature for telecommunications in California.

As explained in D.07-09-020, promoting deployment of additional broadband within areas that are not served at all or underserved is consistent with universal service policies aimed at bridging the “digital divide” as articulated in Pub. Util. Code § 709(c) and (d). While we believe that solutions to the digital divide are best driven by market forces within the telecommunications and internet industry, the public sector has a role to play as well, particularly where in some high cost places in California, the market has failed to bring advanced communications to it. The first and most important public role is to identify and remove unnecessary regulations or barriers in the way of broadband deployment and adoption. The second role is to identify appropriate public policies to provide significant assistance in overcoming broadband deployment obstacles should market forces fail, while increasing the rate of use of advanced telecommunication services.

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<sup>13</sup> National Cable & Telecommunications Assn. v. Brand X Internet Services, 545 U.S. 967 (2005) (Upholding FCC determination that high-speed transmission used to provide cable modem service is a functionally integrated component of that service, and “changed market conditions warrant different [regulatory] treatment.”).

To that end, we hereby establish a process for promoting broadband deployment in unserved and underserved areas of California through the CASF program, as prescribed below. An Assigned Commissioner's Ruling (ACR), issued on September 12, 2007, solicited comments relating to the implementation of the CASF to pay for some of the infrastructure costs of broadband facilities in California's unserved or underserved areas. In order to provide a funding source for the CASF, we solicited comments as to whether and how a portion of the already collected and appropriated B-Fund contributions could meet this purpose or whether other Commission authority could serve as the basis for independent funding. Opening comments were filed on September 26, 2007, and reply comments were filed on October 3, 2007. We have reviewed those comments, and taken them into account in preparing this order.

Comments were filed by the major ILECs: Pacific Bell Telephone Company d/b/a AT&T California (AT&T), Verizon California Inc. (Verizon), SureWest Telephone (SureWest), and by the Small LECs.<sup>14</sup> Comments were also filed by Sprint Nextel (Sprint), the California Cable and Telecommunications Association and Time Warner Telecom of California, L.P (CCTA/Time Warner), Omnipoint Communications, Inc. (dba T-Mobile), The Division of Ratepayer Advocates (DRA), and The Utility Reform Network (TURN).

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<sup>14</sup> The Small LECs consist of Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Global Valley Networks, Inc. Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, Ponderosa Telephone Company, Sierra Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company

The CASF shall be administered on a technology neutral basis by the Commission, with the goal of providing infrastructure support to extend broadband coverage as defined herein to unserved and underserved areas of California, in the respective priority order. Accordingly, we hereby establish a CASF to promote this goal, as set forth below.

## **2. Legal Basis for Adopting the CASF to Advance Broadband Deployment**

### **A. Parties' Position**

Various parties express concerns with respect to creating the CASF for promoting broadband deployment. These concerns were first raised in comments on the Proposed Decision in Phase I of this proceeding.<sup>15</sup> Parties expressed similar concerns in comments filed in response to the ACR dated September 12, 2007.

Parties generally agree that increased deployment of broadband capabilities in unserved and underserved areas is desirable, but question whether the CASF is an appropriate vehicle to achieve that purpose. Various parties also express concern as to the Commission's legal authority to fund the CASF, either within the B-Fund or as an independent program, and recommend obtaining explicit direction from the Legislature in order to most effectively address the Commission's objectives.<sup>16</sup>

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<sup>15</sup> AT&T Comments on the Proposed Decision at 23, Sprint Nextel Comments on the Proposed Decision at 9, SureWest Comments on the Proposed Decision at 6-7, TWTC Comments on the Proposed Decision at 4, Verizon Comments on the Proposed Decision at 18.

<sup>16</sup> DRA Comments at 1-2; Small LEC Comments at 2-3; CCTA/Time Warner Comments at 1, 3 -4, SureWest Comments at 2, Verizon Comments at 3; T-Mobile Comments at 11; TURN Comments at 3 Sprint Comments at 2 and 13, Verizon Comments at 1.

TURN and T-Mobile directly oppose creation of the CASF as a component of the CHCF-B as unlawful. TURN argues that in all sections of the Pub. Util. Code relating to subsidies for various aspects of universal service, there is a prohibition against use of, appropriation or transfer of the money from one fund to another fund or entity. TURN argues, for example, that money deposited into the B-Fund can only be used to support the provision of “basic service” within “high cost” areas by “telephone corporations.”

T-Mobile argues that the CHCF-B was specifically created in D. 96-10-066 to support a local rate structure for affordable basic residential service in high cost areas, but does not authorize the use of B-Fund money to help carriers underwrite broadband deployment even if theoretically usable to deliver basic voice communications. T-Mobile argues that because broadband is not currently defined as a component of universal service, the CHCF-B cannot be used to subsidize its deployment.

Under current rules, certain voice communications providers (including wireless carriers) are categorically precluded from providing basic service and thus becoming COLRs. T-Mobile believes that providing explicit broadband subsidies only to certain carriers could have the unintended consequence of providing the sorts of subsidies that D.07-09-020 was designed to eliminate. T-Mobile also raises the concern that creation of the CASF could undermine competition and distort market forces by supporting the delivery of voice communications using only one type of technology (*i.e.*, broadband). T-Mobile also argues that broadband technology seems to be growing rapidly even without explicit carrier subsidies, and that it is not clear that such a subsidy program is an appropriate or necessary means of promoting further deployment.

Sprint states that until more precise Commission guidance is provided concerning exactly what the CASF will fund, in what amounts, and subject to what conditions, there are too many unknowns to comment definitively on the merits of a CASF program. Sprint argues that before embarking on the CASF subsidy program, the Commission needs more reliable data about the availability of broadband, and where and why it is not available.

Sprint argues that private enterprise will prove to be more efficient and effective than government subsidies, such as through the CASF, in delivering the telecommunications services consumers most want and need. Various parties further argue that the Commission should obtain explicit legislative authority before proceeding with implementation of a CASF program.<sup>17</sup>

## **B. Discussion**

We conclude that, should we desire, the existing statutes provide the requisite authority for the Commission to support broadband deployment under the approach we adopt in this order. We consider the CASF to be a complement to the CHCF-B. The CASF also will promote universal service goals, but will not be a diversion or transfer to another fund. Having stated that, we decide today that funds will be collected separately for the CASF than for the CHCF-B, but will utilize similar administrative mechanisms for gathering the CASF as the CHCF-B.

As discussed *infra*, we conclude that limited funding under Pub. Util. Code § 739.3 for deployment of broadband facilities in unserved and

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<sup>17</sup> CCTA and TWCT Opening Comments on the CASF ACR at 3, TURN Opening Comments on the CASF ACR at 8, Sprint Nextel Opening Comments on the CASF ACR at 5, SureWest Reply Comments at 1.

underserved areas of California is necessary. Further we find it would be permissible to meet the objectives of universal service and is within the prescribed purpose of Pub. Util. Code § 739.3. However, we choose to use our authority under Article XII of the California Constitution and Public Utilities Code § 701 to establish the CASF. We note that funds to be used by the CASF will be collected and appropriated consistent with Legislative direction related to existing universal service programs.<sup>18</sup>

Universal service is defined as an “evolving level of telecommunications services ... taking into account advances in telecommunications and information technologies and services.”<sup>19</sup> Providing funding pursuant to Pub. Util. Code §§ 701 and 709 for deployment of broadband facilities in unserved and underserved high cost areas of California is necessary to meet the objectives of universal service. It is incontrovertible that the telecommunications market is

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<sup>18</sup> AT&T and Verizon argue that Pub. Util. Code §§ 270(b) and 270(c) prohibit the expansion of existing programs. AT&T Comments on the Proposed Decision at 23, Verizon Comments on the Proposed Decision at 18. Such a reading of the statute would lead to absurd results. The programs covered by Section 270 cover a myriad of topics and issues. Advances in technology and other factors have led to changes, including expansions of the programs since they were created. The Commission has taken both formal and informal actions to adapt the programs to changed circumstances. *See, e.g.*, D.05-04-026 (expanding Lifeline eligibility criteria), CPUC Report to the Legislature on the California Teleconnect Fund, May 2005 (outlining numerous improvements to Teleconnect implemented by the Commission); see also Pub. Util. Code § 276.5. AT&T and Verizon would have the Commission institute no improvements or changes to the existing programs. While we do not find this issue applicable to the creation of the CASF, we strongly disagree with parties that would limit our ability to update existing programs. As long as awards would be administered in a manner consistent with the statutory guidelines for the CHCF-B, we consider it to be within the permissible statutory framework of Pub. Util. Code § 270.

<sup>19</sup> 47 U.S.C. § 254(c)(1).

fundamentally changing in terms of providers and technologies; it is further incontrovertible that parts of the state are not receiving the benefits of these changes to their detriment due to outdated universal service mechanisms. The funding of broadband infrastructure may be the best way to take into account advances in telecommunications and information technologies and services and ensure the continued effectiveness of the universal service policies set forth by the state Legislature. We believe our action today is bolstered by California's telecommunication principles as set forth by the Legislature in Pub. Util.

Code § 709:

The Legislature hereby finds and declares that the policies for telecommunications in California are as follows:

- (a) To continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians.
- (b) To focus efforts on providing educational institutions, health care institutions, community-based organizations, and governmental institutions with access to advanced telecommunications services in recognition of their economic and societal impact.
- (c) To encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services.
- (d) To assist in bridging the "digital divide" by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians.
- (e) To promote economic growth, job creation, and the substantial social benefits that will result from the rapid implementation of advanced information and communications technologies by adequate long-term investment in the necessary infrastructure.

- (f) To promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct.
- (g) To remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice.
- (h) To encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems.<sup>20</sup>

Pub. Util. Code § 709(c) identifies as one of the policies for telecommunications in California, the following: “To encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services.” Pub. Util. Code § 709 (d) further identifies as a goal: “To assist in bridging the “digital divide” by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians.”

We have previously taken steps to promote the ubiquitous availability of broadband and advanced services in California, and to enhance broadband connectivity, by establishing the California Emerging Technology Fund (CETF) in conjunction with approval of the mergers of SBC/AT&T and Verizon/MCI. The implementation of the CASF, as adopted in this order, provides an opportunity to take a further important step toward promoting access to state-of-the-art technologies. Broadband development generates productivity

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<sup>20</sup> Pub. Util. Code § 709.



and growth in numerous Internet industries in California including e-learning, telemedicine, video and music entertainment among others. These productivity benefits spill over to economies at large as well, and will result in significant expansion of employment in California.<sup>21</sup> A recent study by the Brookings Institution has quantified just how important broadband deployment is to the people of California, “for every one percentage point increase in broadband penetration in a state, employment is projected to increase by 0.2 to 0.3 percent per year.”<sup>22</sup>

Governor Schwarzenegger has recognized the need for California to play a leading role in the development of broadband. Executive Order S-23-06 issued in November, 2006, established a California Broadband Task Force to “identify

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<sup>21</sup> Contrary to assertions proffered by TURN, academic research has established significant and substantial benefits of increased broadband deployment. Comments of TURN on the CASF ACR, at 3. Some examples contradicting TURN are found *infra*.

<sup>22</sup> *The Effects of Broadband Deployment on Output and Employment: A Cross-sectional Analysis of U.S. Data*, by Robert Crandall, William Lehr and Robert Litan, The Brookings Institution, Issues in Economic Policy, July 2007.

opportunities for increased broadband adoption, and enable the creation and deployment of new advanced communication technologies.”<sup>23</sup>

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<sup>23</sup> Executive Order S-23-06 of Governor Arnold Schwarzenegger.

In addition, California is beginning to develop the mechanisms for identifying and gathering certain useful broadband data as the technology and industry continue to evolve. The California Legislature last year enacted the Digital Infrastructure and Video Competition Act (DIVCA) (AB 2987, Ch. 700, Stats 2006) requiring that certain broadband providers – those that obtain a state-issued video franchise from the CPUC – submit to the CPUC broadband subscribership information and data about homes passed at the census tract level. In this context, the Legislature ordered build-out requirements to ensure service was made available to all Californians, particularly low income and rural citizens.<sup>24</sup> Legislative direction recognizes that broadband services are and will be used to deliver universal telephone service now and in the future.<sup>25</sup>

In addition to the specific direction enunciated by the California Legislature in Public Utilities Code,<sup>26</sup> the federal Telecommunications Act requires:

The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage

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<sup>24</sup> Pub. Util. Code § 5890.

<sup>25</sup> Pub. Util. Code § 709.6(c) (“Encourages the provision of advanced, high-speed digital telecommunications services to the public.”), Pub. Util. Code § 709.7 (California High Speed Internet Access Act of 1999), Pub. Util. Code § 5810(a)(2)(E) (“DIVCA legislation should [c]omplement efforts to increase investment in broadband infrastructure and close the digital divide.”), *see also*, Pub. Util. Code § 5810(a)(1) (“increasing competition for video and broadband services is a matter of statewide concern”).

<sup>26</sup> Pub. Util. Code §§ 709(c) (“encourage the development and deployment of new technologies and ... the ubiquitous availability of a wide choice of state-of-the-art services.”), 709(e) (“rapid implementation of advanced information and communications technologies by adequate long-term investment in the necessary infrastructure.”), 709.6(c) (“Encourage the provision of advanced, high-speed digital telecommunications services to the public.”).

the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.<sup>27</sup>

Given the slow historic deployment of broadband services in California during this decade,<sup>28</sup> the importance of broadband to the financial health of the state,<sup>29</sup> and the direction of the Legislature “to encourage the development of new technologies,”<sup>30</sup> we find that action is warranted to encourage more rapid deployment. For this purpose, it is appropriate to dedicate funding into the deployment of broadband facilities in unserved and underserved high cost areas of California. The allocation of money to the CASF program will provide important incentives to advance – from a critical timing point of view – rural areas in California obtaining advanced telecommunications services including

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<sup>27</sup> Telecommunications Act of 1996, Pub. L. 104-104, Feb. 8, 1996, 110 Stat. 56, at § 706. See also 47 U.S.C. § 157 (“It shall be the policy of the United States to encourage the provision of new technologies and services to the public.”).

<sup>28</sup> *Connecting California*, California Public Utilities Commission Telecommunication Division Broadband Report Update, September 20, 2006.

<sup>29</sup> Executive Order S-23-06 of Governor Arnold Schwarzenegger.

<sup>30</sup> Pub. Util. Code § 709(c).

voice services. The CASF will accelerate broadband deployment more rapidly than if we simply left market forces to deliver such services. Given the rural and

remote nature of some of these areas which result in high costs to install advanced communications systems, we in fact do not have confidence that broadband services will be deployed absent this type of CASF program. Further, we emphasize that voice services ride on broadband infrastructure as an application, thus provisioning broadband in high cost areas does tie in directly to our universal goals relating to voice service.<sup>31</sup>

An important goal of universal service policy is to ensure that all citizens have access to critical communications technologies. A suitable, competitively neutral, and broad-based program targeted toward broadband infrastructure is critical to ensuring “a fair and equitable local rate support structure” in high cost areas.<sup>32</sup> The CASF will “promote the goals of universal telephone service and ... reduce any disparity in the rates charged by those companies.”<sup>33</sup> Accordingly, consistent with our goal of promoting universal service, we shall require that a voice service be offered as one of the components of any broadband service funded through the CASF program. Accordingly, any recipient of a CASF grant shall be required to offer voice service in the service area(s) covered by the broadband deployment.

In legislation enacted subsequent to Pub. Util. Code § 739.3, the Legislature provided guidance regarding the implementation, development, and

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<sup>31</sup> The Commission notes that the federal universal service mechanisms are also moving toward supporting broadband services. *See* Federal-State Joint Board on Universal Service Statement on Long Term, Comprehensive High-Cost Universal Service Reform, WC Docket No. 05-337, CC Docket No. 96-45, FCC 07J-3, rel. September 6, 2007.

<sup>32</sup> *See* Pub. Util. Code § 739.3(c).

<sup>33</sup> *Id.*

administration of the universal service programs.<sup>34</sup> Legislative intent in expanding the uses of the California high cost funds shows that the basic descriptive language in Section 276 recognizes the evolving nature of universal service, and that grants similar in structure to the CASF may be allowable under Sections 276 and 739.3.<sup>35</sup>

The Legislature and Governor have both clearly proclaimed the importance of high-quality telecommunications and advanced information and communication technologies. Thus, in order to effectuate our universal service obligations under Pub. Util. Code §§ 709 and 739.3, and §§ 254 and 706 of the Telecommunications Act, we find it appropriate to offer incentives for broadband infrastructure in unserved and underserved high cost areas of the state on a going forward basis. Accordingly, we hereby implement funding of

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<sup>34</sup> Pub. Util. Code §§ 270-281 (Chapter 1.5. Advisory Boards, Added by Stats. 1999, Ch. 677, Sec. 2, Effective January 1, 2000). To specify the purposes of the various universal service funds, the Legislature references the relevant section of the Public Utilities Code, enacted legislation, or Commission decision that governs the respective program. In reviewing the Chapter as a whole, it is clear that the descriptive language in 276 regarding CHCF-B does not alter or more narrowly define how other infrastructure used to deliver telecommunication services may be funded through the B-Fund when read in conjunction with Pub. Util. Code § 739.3. *See*, Cal. Stats. 1999, Ch.677, Legislative Counsel's Digest (2). Further evidence of the Legislative intent to move control over the deposit and expenditure of the funds to the state's chief fiscal officer can be found in the subsequent enactment of Section 276.5 in 2004 where the Legislature established a renewing grant program utilizing either the A-Fund or the B-Fund at the discretion of the Commission.

<sup>35</sup> In order to ensure that parties' concerns would not unduly delay implementation of the CASF component of the CHCF-B, we solicited comments in the ACR on the merits of setting up a new program pursuant to our general statutory authority under Pub. Util. Code § 701.<sup>35</sup>

broadband infrastructure in unserved and underserved areas through the CASF, as prescribed below.<sup>36</sup>

### **3. Total Funds Allocated to the CASF Program**

In D.07-09-020, we directed that effective January 1, 2008, the B-Fund surcharge be lowered to reflect the reduced level of subsidy draw resulting from raising the high cost threshold eligible for B-Fund support. We stated that maintaining an increased B-Fund contribution surcharge until January 1, 2008 was necessary as the phase-in of the new benchmark does not begin until that date. Therefore, we refrained from lowering the B-Fund surcharge until that time. In this interim order, we likewise determine whether, or to what extent, the existing B-Fund surcharge should be changed to allocate funds toward both the CASF and the CHCF-B. We have reviewed the comments filed in this phase of the proceeding concerning the merits of such an approach and the size of the CASF.

#### **C. Parties' Positions**

AT&T argues that the determination of the appropriate overall amount of funding that should be provided through the CASF depends upon the program parameters (*e.g.*, broadband transmission speeds, lead time for construction deployment, and topographies and populations of proposed service areas).and the demand for funds based upon those parameters. AT&T suggests that the

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<sup>36</sup> Pursuant to our authority under Article XII of the California Constitution and Pub. Util. Code § 701. We note that almost all of the existing universal service programs in California began in a similar manner where the Commission initiated the program under its plenary authority and the Legislature often, but not always, has later provided the statutory parameters of the program. *See* Pub. Util. Code §§ 270-280, 739.3, 2881-2881.2.



Commission collect funds as needed based upon applications received and expenditures paid over time.

Verizon argues that the size of the CASF should be limited to excess funds beyond those needed to support basic services in high cost areas, consistent with the principle in D.07-09-020 that consumers are entitled to relief from excessive burdens of B-Fund subsidies without delay. Verizon believes that the reduction of the B-Fund surcharge from 1.3% to 0.5%, as ordered in D.07-09-020, however, may leave no surplus to fund the CASF. Based on the premise that any surplus in the B-Fund is likely to be limited, Verizon argues that funding criteria should narrowly target support to unserved areas so as to benefit the most potential customers.

Verizon provides a “rough estimate” of between \$50-\$80 million for the potential range of CASF subsidies that may be requested, based on 2006 census estimates of 12.2 million California housing units multiplied by an 8% factor for unserved housing units, using FCC statistics.

Sprint states that if any surplus remains in the B-Fund after taking into account the reduced surcharge collections and subsidy support levels as ordered in D.07-09-020, the California State Assembly appears to point toward the need for refunds to be paid to ratepayers who supplied the funds in the first place.<sup>37</sup> Sprint argues that the Commission should in any event, first conduct the research necessary to determine the appropriate design of a successful program and determine the appropriate total pool of funds to be designated for CASF subsidies prior to soliciting any applications.

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<sup>37</sup> Sprint Reply Comments at 14, citing *Assembly of the State of California v. Public Utilities Commission* (1995) 12 Cal. 4<sup>th</sup> 87 (State Assembly).

#### **D. Discussion**

We shall allocate to the CASF \$100 million. It shall be collected using the same surcharge mechanism as the CHCF-B, with the funds allocated half to the CASF and half to the CHCF-B.<sup>38</sup> The CASF allocation represents our estimate of the amount of funds collected by half of the 0.5% surcharge over a two year period. Such an allocation will begin with the surcharge revenues collected after January 1, 2008.<sup>39</sup> We consider \$100 million to provide an appropriate amount of initial funding for the CASF, given its purpose as a limited funding source to augment the deployment of broadband in unserved and underserved areas. We believe that a specific amount of funding is superior option to an “as needed” amount as it limits the overall collection and allows for better oversight by the Commission of the proposed projects. We also believe that Verizon’s “rough estimate” is a reasonable basis upon which to base the initial funding component for unserved areas and include an additional support amount to ensure that underserved areas also receive funding.

To the extent that the total amount of claims for CASF support exceed the total pool of funds that we have allocated, we shall first rank Applicants’ proposed projects in terms of how well they satisfy the selection criteria and

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<sup>38</sup> Carriers may use the same surcharge line on customer bills for both the CHCF-B and the CASF.

<sup>39</sup> This \$100 million takes into account the approximate difference between the originally forecasted CHCF-B claim amount as adopted in our Resolution T-17103 of approximately \$419 million and the revised estimate of approximately \$196 million due to the CHCF-B modifications we adopted in D.07-09-020. The B-Fund modifications adopted in D.07-09-020 include reductions in surcharge revenues collected after January 1, 2008 and reduced draws on the B-fund as a result of raising the high-cost threshold to \$36 per line, to be phased in by July 1, 2009.

award funds to the most qualified applicants in accordance with those rankings. If unserved and underserved areas remain after the initial two-year period of the surcharge, the Commission may choose to continue the CASF surcharge to ensure the benefits of advanced services are made available to all of California.

#### **4. Scope of the CASF Program**

As envisioned in D.07-09-020, the CASF will be a limited source of matching funds to build advanced infrastructure in California. We expect to consult with the California Emerging Technology Fund to help identify unserved and underserved areas of California. CETF has provided some updated broadband maps to the Governor's Broadband Task Force, which we believe will be instructive to our goal at hand.

#### **5. Process for Administering the CASF Program**

By ACR dated September 12, 2007, we solicited comments regarding the development of a process whereby applicants may qualify for funding to be used to deploy broadband in high cost areas that are not currently being served or that are underserved. In Appendix 3 of D.07-09-020, we presented a tentative process for administering CASF applications. In this decision, we finalize the process for administration of broadband deployment funding under the CASF program.

##### **A. Schedule for Processing of Applications**

##### **1. Parties' Positions**

We hereby authorize eligible candidates seeking to obtain funding under the CASF program to file formal applications pursuant to the schedule and process prescribed below. In addition to the procedural requirements generally specified in Article 2 of the Commission's Rules of Practice and Procedure, applicants shall meet the additional special requirements set forth herein.

AT&T and Verizon propose setting a single deadline for the filing of all applications rather than opening a 60-day window during which additional applications could be filed. Verizon argues that opening a 60-day window would delay and complicate the application process unnecessarily. Given the size of the more rural CBGs, Verizon believes that proposed funding projects within the same CBG may not overlap. Alternatively, Verizon suggests that the process be separated into a phase where interest in grants for particular CBGs be solicited. Where two or more parties express an interest in such a case, a filing timeline could be set such that parties submit simultaneous confidential applications.

Sprint argues that the “single deadline” approach for application filings is feasible only if the Commission clearly defines in advance what standards should apply to CASF requests, and delineates the areas in which funding will be supported. Otherwise, Sprint argues, the Commission could receive a “flurry” of applications that are not actually comparable in any rational manner.

## **2. Discussion**

We hereby set a deadline of June 2, 2008, for the filing of initial applications by parties seeking CASF grants. Interested parties shall have a 30-day period thereafter within which to file general responses to any CASF application. We shall provide a period of up to 45 days, however, for any party to file a response to a CASF application which presents a counteroffer to match an applicant’s proposed deployment commitment, either under more favorable terms, or through a lower requested CASF award. Such counteroffers must provide requisite supporting information for comparison of its claims with those made by the original applicant. Applications filed within each month after June 2, 2008 shall be treated as if filed at the same time for evaluation purposes,

and applications will be accepted until all of the funds allocated to the CASF have been designated or until December 2011. The Commission will begin an evaluation of the effectiveness of the initial awards under CASF no later than July 1, 2010, and may create a separate surcharge to extend the CASF.

Applications will be reviewed based upon how well they meet the criteria for selection as set forth below, and, where applicable, compared with any competing claims to match the deployment offer under superior terms. Such criteria should be evaluated on a competitively neutral basis. To the extent that the total amount of CASF funds requested by eligible applicants exceeds the available pool of funds that we have allotted for this program, we shall award the funds based upon a ranking of applicants' projects. Those projects that are ranked the highest based upon our assessment of selection criteria will be awarded the available funds.

## **B. Requirements to Support Applications for Broadband Funding**

Clear and objective CASF program guidelines must be established so that applicants can understand the selection priorities under which applications will be reviewed and funds awarded.

### **1. Parties' Position**

AT&T proposes that an applicant's project plans specify the type of facilities to be deployed, the geographic areas and estimated number of subscribers to be covered, total project cost, the amount of CASF support sought, and the amount of applicant's own funds to be used.

Verizon proposes that applicants for CASF money be required to meet specific criteria, with a "point value" assigned to each criterion, designed to measure those deployment projects that will maximize the benefits from

awarding funding. Verizon points to features adopted in a similar grant process implemented last year by the State of Idaho<sup>40</sup> as a possible model for consideration in designing the CASF program, including requirements for applicants to identify and document the following:

- source, amount, and availability of matching funds
- number of potential new subscribers
- marketing plan
- detailed startup costs to be funded by the grant
- proposed budget

As a primary selection criterion for a CASF award, Verizon points to program cost per potential subscriber. In order to provide for consistent evaluation of multiple applications, Verizon notes that a standardized definition of the term “potential subscriber” is necessary. An inflated figure applied by an applicant for “potential subscribers” could skew a project comparison.

Verizon suggests that applicants be able to apply for grants seeking less than a 50% matching of the project costs and calculate only the matching portion sought in the cost per potential subscriber.

Verizon argues that funding awards should not be made based upon the applicant’s retail price per MBPS. Verizon argues that broadband pricing is not done on a standardized industry scale, but is a dynamic process that changes frequently based on regional or national considerations. Moreover, specific service features can vary between providers.

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<sup>40</sup> The “Rural Broadband Investment Program,” under which \$5 million was made available for rural broadband project pursuant to Senate Bill 1498, was enacted by the Idaho Legislature and signed into law on April 12, 2006.

In addition, the Idaho program mandates that applicants who fail to deliver broadband services as specified in an approved project will be required to repay grant funds.

## **2. Discussion**

Applicants shall be required to submit the following data to the Commission, for each proposed broadband project, subject to appropriate confidentiality provisions:

- (1) Description of applicant's current broadband infrastructure and map of current service area by census block group;
- (2) Description of proposed broadband project plan for which CASF funding is being requested, including download and upload speed capabilities of proposed facilities. Minimum speed standards shall be 3 MBPS download and 1 MBPS upload.
- (3) Geographic locations by census block group where broadband facilities will be deployed. Boundaries of the specific area to be served by the project, with map by census block group, along with a verifiable showing that the area is unserved or underserved;
- (4) Estimated number of potential new broadband subscribers.
- (5) Schedule for deployment, with commitment to complete build out within 18-24 months of the grant of the application. Schedule shall identify major construction milestones that can be verified by Commission staff.
- (6) Proposed budget for the project, with a detailed breakdown of cost elements, and including source, amount, and availability of matching funds to be supplied by applicant, and the CASF grant amount requested. At least 60% matching funds must be supplied by applicant.

- (7) Proposed retail price per MBPS for new broadband service.
- (8) Period of commitment to offer broadband services to all households within the service area of the project, and
- (9) Financial qualifications to meet commitments.

We shall require a separate showing for each proposed broadband project. For this purpose, we define a single broadband project as deployment encompassing a single contiguous group of CBGs. Applicants may seek funding for more than one project within a single application, but must provide separate supporting documentation for each project.

We shall review applications and make funding determinations based at least on the following factors: price per MBPS offered to customers, overall size of the request, matching funds, time for implementation, priority for unserved areas over underserved areas. The Commission staff has the discretion to propose other criteria based on workshops. We will adopt an explicit “point” scoring for specific criteria, as suggested by Verizon. We will qualitatively evaluate the various proposals in a relative ranking so that the available pool of CASF money is allocated to those projects expected to provide the greatest broadband deployment at affordable rates, providing the transmission speeds we have designated. Commission staff shall propose the scoring criteria prior to a workshop designed to evaluate the proposed scoring criteria, and must enunciate the final scoring criteria at least 45 days before applications are to be filed.

Funding determinations shall be made based on how well applicants satisfy the following designated criteria. The price per MBPS offered to customers, overall size of the funding request, meeting the percentage of matching funds, financial qualifications, meeting our minimum speed



requirements and time for implementation. We shall place a higher priority on applications for unserved areas versus for underserved areas. A reasonable amount of funding may be distributed at various stages of construction upon completion of specific milestones.

### **C. “Telephone Corporation” Eligibility Requirements**

#### **1. Parties’ Positions**

AT&T, Verizon, and SureWest argue that recipients of CASF money should be limited to entities that qualify as “telephone corporations” under Sec. 234, excluding those telephone corporations (*i.e.*, the “small LECs”) whose broadband deployment costs are subject to rate-of-return regulation. AT&T argues that such companies can already recover their broadband deployment costs by including such deployment costs in their rate base as authorized by the Commission.

CCTA/Time Warner argue that in order to promote competitive neutrality, eligibility to participate in the CASF program should be extended to all entities offering broadband services, not just “telephone corporations.”

#### **2. Discussion**

In order to administer the program within the statutory framework we adopt herein and maximize the effectiveness of Commission oversight, CASF funding shall be limited to a “telephone corporation” as defined under Pub. Util. Code § 234.<sup>41</sup> If an entity has an application pending for approval of a CPCN application to provide service as a “telephone corporation”, we shall permit the

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<sup>41</sup> See, Pub. Util. Code §§ 233 and 234.

entity to file an application for a CASF grant subject to subsequent approval of the CPCN to provide service as a “telephone corporation.”

Funding not directed for use for broadband deployment by January 1, 2010, may be used to fund advanced broadband services at download speeds greater than 3 MBPS. The CASF program may well serve as a precursor to a reverse auction process which we are exploring as a possible way to meet our universal service goals on a forward-looking basis.

#### **D. Requirement to Offer Residential Voice Service**

##### **1. Parties' Positions**

Under the Commission's current definition of “basic residential service,” adopted in D.96-10-066, however, providers of wireless service or broadband VoIP would be excluded from participation in the CASF program. AT&T and Sprint both argue that the current definition of “basic service” is too restrictive and is not technology-neutral. Sprint argues that CASF eligibility should not require provision of “basic residential service” as currently defined, but should simply require that any CASF-funded broadband service be capable of supporting “voice” service.

DRA supports a more inclusive definition that is more reflective of today's technology and competitive environment.

##### **2. Discussion**

The purpose of the B fund is “to provide for transfer payments to telephone corporations providing local exchange services in high cost areas in the state to create fair and equitable local rate structures.” In D.96-10-066, (the universal service decision), the Commission established the B fund. The Commission made a commitment to ensure that basic residential telephone

service be made available throughout California and that the rates for such service remain affordable. The decision adopted rules pertaining to how universal service was to be carried out in California as the local exchange telephone markets were opened to competing carriers pursuant to changes contained in the Telecommunications Act of 1996.

In D.96-10-066, the Commission limited the scope of the CHCF-B to carriers providing residential local exchange service in high-cost areas. (See D.96-10-066, Ordering Paragraphs 7 and 8.) The Commission has entertained the issue whether to expand the definition on basic residential service to include broadband services in the past, but declined to expand the definition at that time. For example, the Commission noted in D.95-07-050, that one potential problem with developing incentives to promote the deployment of advanced technologies is that this Commission's jurisdiction is limited to public utilities. Many of the advanced services being developed and offered today require hardware, software, and other components, in addition to the information that is provided to the end user. The Commission can formulate incentives with respect to the telecommunication services that are utilized, but cannot order incentives or impose assessments on the other non-regulated companies that are coming together to offer these services.

Because the CASF is created to ensure the continued availability of voice communications throughout California, we shall require that eligible recipients also offer a basic voice service to customers within the service area of the broadband deployment subject to the CASF grant. We agree that the definition of basic service needs to be modified for purposes of the CASF program to include any form of voice-grade service, including that offered by a wireless or VoIP provider. At least within the context of eligibility for awards of CASF

money, we hereby adopt such modification, expanding the definition of qualifying “basic service” to include any form of voice-grade service, including that offered through a wireless or VoIP service.

## **E. Broadband “Project” Definition**

### **1. Parties’ Positions**

As a basis for supporting an application for CASF support for a broadband project, parameters must be specified regarding what actually constitutes a separate “project.” Verizon suggests, for example, that contiguous CBGs served by a single switching facility could be deemed to constitute a single “project” unless an applicant could demonstrate some economies of scale achieved in combining a group of CBGs that include more than a single switching center. Alternatively, Verizon suggests that applicants could identify another rationale for grouping CBGs (*e.g.*, installation of required transport facilities).

### **2. Discussion**

We decline to adopt a project definition based upon CBGs served by a single switch. We conclude that a more technology-neutral approach is to define a project in terms of CBGs. A single broadband project shall consist of a group of contiguous CBGs in which service is to be offered.

## **F. Minimum Broadband Speed Eligibility Standards**

### **1. Parties’ Positions**

In D.07-09-020, we solicited comments on a CASF award process whereby priority would be given first to areas not served by facilities capable of providing 3 MBPS download and 1 MBPS upload speeds, and second, to underserved areas (defined as areas with only one facilities-based provider capable of providing those speeds to all customers).

Verizon argues, however, that it is unclear that a minimum speed requirement of 3MBPS downstream and 1 MBPS upstream is an appropriate threshold for prioritizing applicants' funding proposals. Verizon argues that providing 3 MBPS service to customers served by long loops will require costly upgrades, and that a slower speed threshold would expand the potential subscriber base for CASF funding, thus reducing the cost per potential subscriber in more rural areas with lower population density.

AT&T argues that the 3 MBPS/1MBPS speeds may provide capabilities useful in the future, but are currently well beyond those available to or needed by most Californians. AT&T argues that a much slower speed threshold should be used which reflects the current competitive market offerings.

Sprint argues that unless there is incontrovertible evidence of a market failure, the Commission should let the market decide, rather than intervening with a subsidy program that picks winners and losers through government subsidies.

## **2. Discussion**

We shall adopt the 3 MBPS/1MBPS speed standards as the benchmark for evaluating applications. Such speeds provide a minimum necessary to effectively work from home.<sup>42</sup> We adopt these speeds to help ensure

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<sup>42</sup> Broadband access has a large impact on the incentives to work from home. *Broadband Access, Telecommuting and the Urban-Rural Digital Divide* by Moohoun Song, Peter Orazem, and Rajesh Singh, February 2006 working paper, Iowa State University Department of Economics. *See also*, Need for Speed...How Real? by Om Malik, Dec. 20, 2005, available at <http://gigaom.com/2005/12/20/need-for-speed/>

telecommuting is an option in all areas of the state.<sup>43</sup> Both faster and slower standards have been argued for by parties. We find compelling the arguments that a minimum upload speed of 1 MPBS is necessary for effective telcommuting.<sup>44</sup> Further we note that another nation already has over 70 percent of its households at similar speeds,<sup>45</sup> and a different nation has one-third of its households with fiber based connections with plans to wire the remaining two-thirds (another 28 million households) by 2010. A recent study in Europe delineated 1 MBPS as the minimum speed necessary for telecommuting and recommended a speed of 7 MBPS for that service.<sup>46</sup> While we decline to establish our initial benchmark at the 7 MBPS level, a speed greater than the 1 MBPS minimum should be the goal for California. Further, we note that in California, Verizon uses 1 MB and 3 MB files to show on-line comparisons between dial-up and different broadband speeds.<sup>47</sup>

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<sup>43</sup> Telecommuting has special significance for residents of remote areas or workers constrained by child or elder care needs. National Academy of Sciences 2002 Report at 117. Telecommunications can reduce and even eliminate barriers imposed by distance. These distance barriers not only contribute to travel costs but also to the time required to cover even short distances. Telecommuting also eliminates further contributions to air pollution as staying at home consumes three times less energy than commuting to work. Telecommute, Fall 2000.

<sup>44</sup> See e.g., National Broadband Initiative. Report at p. 109. Innovation and Knowledge Mission Unit "Unidade de Missao Inovacao e Conhecimento." 2003. Lisboa.

<sup>45</sup> South Korea policies direct subsidies for the construction of a national broadband backbone to increase the 70 percent of households with 1 to 2 MBPS to 50 to 100 MBPS.

<sup>46</sup> *Id.*

<sup>47</sup> See Verizon Speed Comparison, available at <http://www22.verizon.com/content/consumersdsl/explore/speed+comparison/speed+comparison.htm>.

Proposals for the same area that offer a higher speed than these minimums will be weighted more favorably, while those offering slower speeds will be ranked lower relative to competing applications for funding. We think this method addresses the arguments of commenting parties for flexibility.

## **G. Timing Requirements for Build-out of Broadband Facilities**

### **1. Parties' Positions**

AT&T argues that the applicant should state the expected (and maximum) period of time anticipated for deployment, long with specific milestones which must be verified by Commission staff. AT&T argues that all deployments should be required to be completed within two years of approval, subject to extension based on a showing that uncontrollable factors were involved.

Verizon proposes that up to an 18-month period be allowed from the date of a CASF award to the completion of a broadband deployment project, with additional flexibility for circumstances beyond the carrier's control. Verizon argues that such a timing criteria is necessary in order to attract a sufficient number of applicants. Verizon argues that the degree of complexity built into the application process and Commission regulation of the deployment process will impact the number of applicants and the timing required for deployment.

### **2. Discussion**

We shall generally expect applicants to provide a commitment of no longer than 24 months within which to complete a given broadband deployment project. Where two applicants are competing for CASF funding with projects that are otherwise similar, preference will be given to the project that commits to a more rapid completion schedule.

In the case of authorization for granting video franchises for broadband projects pursuant to DIVCA, we required that an applicant must provide an expected date of deployment for the entirety of each noncontiguous grouping or region included in its proposed video service area footprint. In similar fashion, we shall require that CASF applicants provide a separate schedule for deployment for each noncontiguous grouping or region that constitutes a separate “project.” The Commission believes providing incentives for broadband facilities in a more rapid time frame serves the goals of deploying broadband facilities sooner and in a more comprehensive manner to unserved and underserved areas.

## **H. Matching Funds Requirements**

### **1. Parties’ Positions**

Parties generally agree that some level of matching funds must be provided by applicants as a condition of receiving a CASF award. Sprint proposes that CASF recipients be required to provide at least 80% of the funds for any CASF project. AT&T and Verizon suggest a requirement of at least 50% matching funding by each CASF recipient.

### **2. Discussion**

We shall require that applicants provide a minimum of 60% matching funds as a prerequisite to consideration of their application for a CASF grant. By requiring matching funding of at least 60% of the project cost, we provide an appropriate incentive for applicants to seek CASF money only for projects that are economically viable. To the extent that an applicant commits to provide greater than a 60% share of the budget for the proposed broadband project, that applicant’s proposal will receive a higher preference in being granted a CASF award.



## **I. Geographic Area(s) Eligible for CASF Project Funding**

### **1. Parties' Positions**

In D.07-09-020, we sought comments on the use of CBGs for identifying the geographic scope of a broadband project eligible for CASF funding. Verizon argues that because CBGs vary in size and more rural CBGs tend to be quite large, funded projects cannot necessarily be expected to extend broadband throughout a given CBG. Moreover, service areas may bisect CBGs. For these reasons, Verizon argues that CBG boundaries should not serve as project boundaries.

Verizon argues that funding should target only areas where broadband does not currently exist, where opportunities for funding and cooperative partnerships are maximized, and where funds will have the greatest impact. Verizon argues that areas that already have wireline broadband availability, even if service is offered at speeds below 3 MBPS, should not be eligible for funding.

To assist in researching unserved area characteristics, various parties propose making available to applicants that the maps of broadband availability that are being constructed as part of the California Broadband Task Force efforts. CCTA/Time Warner states that it is unknown at this time as to how many unserved areas exist within the service territories of the major ILECs. AT&T, CCTA/Time Warner, SureWest, Verizon, and DRA all recommend waiting for the results from the Governor's Broadband Task Force before determining the parameters of the CASF program.

By identifying unserved areas utilizing the mapping from the Broadband Task Force, Verizon argues, the Commission could then assess projects at the

appropriate level of detail to evaluate competing proposals. DRA likewise argues that without such mapping data, valid questions can be raised as to whether there is actually a need to subsidize broadband infrastructure.

Verizon argues that applicants should not be expected to make a verifiable showing that an area under consideration for CASF subsidies is “unserved.” Sprint argues that if an applicant seeks funding based on its belief that an area is “unserved,” however, competing carriers should have at least 60 days in which to demonstrate that an area currently is being served.

AT&T proposes that “unserved areas” be defined as areas where service is not currently available at 200 Kbps in either direction (or alternatively, a standard of 500 Kbps could be used based on the minimum reporting speed used in the California Task Force). AT&T proposes that the CASF not subsidize deployment in areas where there is already at least one provider.

DRA asks the Commission to clarify what constitutes an “unserved” area. DRA questions whether an area is to be deemed “unserved” only by considering the services and service providers applicable for a CASF subsidy. Should the unserved areas only be those designated as “uneconomic” or currently classified as “high cost” areas? AT&T disagrees with restricting CASF funding only to those areas that are currently designated as “high cost” under the B-Fund program. AT&T argues that currently designated “high cost” areas are based on an outdated analysis of basic service costs under a definition that excludes broadband service.

## **2. Discussion**

We shall require that each applicant shall bear the responsibility to assess whether a proposed project is in an area that is currently not being served by broadband at or above the upload/download speed standards adopted herein.

In the event that an applicant erroneously asserts that a proposed project will cover an area that is currently unserved, opposing parties will have the opportunity to challenge such assertions by filing responses to the application, as discussed above, and to refute such claims with their own data as to other broadband service that may already be available in the service area.

Priority in granting applications shall be directed first to awarding CASF funds to projects in areas not served by facilities capable of providing 3 MBPS download and 1 MBPS upload speeds. We shall consider as a secondary priority, awarding funds to projects targeting an underserved area (*e.g.*, an area with only one facilities-based provider capable of providing those speeds to all customers).

We agree that an “unserved” area should only be defined as pertaining to broadband services and service providers applicable for a CASF subsidy. CASF funding will not be restricted only to those areas currently designated as “high cost” for purposes of basic service support. Such “high cost” designations are based upon outdated data that was compiled over 10 years ago, based upon legacy wireline technology.

We shall not restrict the eligible areas for CASF funding only to the major ILEC service territories currently covered by the B-Fund. We shall also permit CASF applications that seek to deploy broadband in areas served by the Small LECs within their incumbent service territories, assuming other requirements are met.

#### **J. Commitment to Serve**

AT&T proposes that the applicant should commit to offer the supported broadband service upon completion of the deployment to all households within the area defined by the application, for a minimum period specified by the

Commission, such as five years. AT&T also proposes that the applicant should also make a voluntary commitment as to the price of supported services. AT&T argues, however, that the Commission should not impose a price cap or pricing schedule, as such a requirement would be a step backward from the deregulatory direction adopted in the URF proceeding.

We shall impose a requirement that as a condition of receiving a CASF award, the recipient must make a commitment for a five-year period to offer broadband service to any residential household or small commercial business within the service territory covered by the deployment. We agree that it would be inappropriate for the Commission to impose any price caps on broadband services given our recent URF decision and the traditionally unregulated broadband market place. We will, however, evaluate funding requests by considering the prices at which applicants propose to offer broadband service. Applicants with lower prices pledged for a particular time frame on a voluntary basis will receive more favorable consideration. Affordability of broadband service is a key factor as to the Digital Divide, particularly for low-income, disadvantaged, senior, and disability communities. Thus, we believe that affordability is an appropriate criterion to apply in ranking the projects as a basis for selecting projects to be allocated CASF money. We shall require applicants to honor the voluntary pricing commitments set forth in their applications as a condition of receiving funding.

#### **K. Cost Categories Eligible for Funding**

Verizon believes that the CASF should be limited to funding capital deployment, not the cost of operating and maintaining the broadband network. We agree with this limitation. Funding awards will be limited only to capital funding. The disbursement of CASF funds will only be provided for authorized

capital spending on approved broadband deployment projects, and shall not be used to pay for any operating or maintenance expenses.

**L. Financial Qualifications to Complete  
Broadband Commitments**

We shall require applicants to provide financial statements demonstrating their fitness and ability to provide the requisite share of funds necessary to construct and deploy the broadband facilities being proposed. As specified in Rule 2.3 of the Commission's Rules of Practice and Procedure, applicant shall provide a balance sheet as of the latest available date, together with an income statement covering period from close of last year for which an annual report has been filed with the Commission to the date of the balance sheet attached to the application.

Applicants may also propose to post a performance bond, if deemed necessary to provide requisite assurance that applicant has the financial resources to complete the broadband project. While a performance bond may be necessary in certain cases, such as for a new provider with no financial track record, AT&T argues that the requirement for a performance bond be reduced or eliminated for carriers with established service records or credit ratings.

On a case-by-case basis, an evaluation will be made of the need to require an applicant to post a bond to provide adequate financial safeguards, and reasonable certainty that the broadband project can be completed, or that funds can be retrieved from the applicant in event of nonperformance.

We note that under DIVCA, local governmental entities are tasked with determining the "time, place, and manner" of a state video franchise holder's use

of the local rights-of-way.<sup>48</sup> In overseeing time, place and manner of this use, local entities may issue rights-of-way permits, and these local permits may require further security instruments to ensure that a state video franchise holder fulfills locally regulated obligations.<sup>49</sup> Locally required security instruments can best take into account size and scope of a state video franchise holder's local construction and operations. Similar considerations apply to the CASF applications that we will evaluate. In any event, a performance bond may be required for applicants if deemed necessary to provide adequate assurance that CASF funds will be properly spent.

#### **M. Disbursement of CASF Awards**

Once a CASF application is approved, we shall delegate the administration of disbursements of funds to the Commission Staff. CASF disbursements shall be made on an installment basis, corresponding with the degree of progress toward completion of the approved broadband project. An initial disbursement of 25 % of the total CASF award shall be made upon Applicant's submission to Commission staff of a progress report, with supporting documentation showing

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<sup>48</sup> CAL. PUB. UTIL. CODE § 5840(e)(1)(C) (providing that a state video franchise holder must comply with "all lawful city, county, or city and county regulations regarding the time, place, and manner of using the public rights-of-way, including, but not limited to, payment of applicable encroachment, permit, and inspection fees"). See also id. at § 5885(a) ("The local entity shall allow the holder of a state franchise under this division to install, construct, and maintain a network within public rights-of-way under the same time, place, and manner as the provisions governing telephone corporations under applicable state and federal law, including, but not limited to, the provisions of Section 7901.1.").

<sup>49</sup> Id. at § 5840(e)(1)(C) (recognizing that state video franchise holders must abide by lawful local regulations regarding "the time, place, and manner of using the public rights-of-way").

that Applicant has completed 25 % of the total approved broadband project. Supporting documentation shall be provided in the form of invoices, and other relevant documentation, showing the expenditures incurred for the project. Staff reserves the option to require additional supporting information or verification from the applicant as a basis for authorizing any disbursement of CASF funds.

Subsequent CASF disbursements shall be made upon Applicant's subsequent submissions of documentation showing completion of 50%, 75% and 100%, respectively, of the total project. If an applicant fails to complete the broadband project in accordance with the terms of approval granted by the Commission, the applicant shall be required to forfeit any CASF funds that it has received.

#### **N. Requirements for Audit, Verification of Proper Use of Funds**

CASF recipients will be subject to specific audit or related verification requirements to verify that funds are spent in accordance with Commission requirements. AT&T argues that any audits should be conducted after completion of projects, or at defined intervals, such as fiscal year-end, so that the recipient can plan its schedule in advance. AT&T argues that the Commission should adopt procedures for recovery of funds that are disbursed in violation of any provision under Commission rules or applicable state or federal law.

Verizon proposes that applicants awarded CASF funding be required to submit a project completion report at the conclusion of the project. This report would ensure that the broadband-capable facilities were installed and that the CBG could be reclassified as one offering broadband. Verizon argues that extensive audit, verification, and other requirements are unnecessary given the

nature of competitive markets and the fact that applicants will be matching at least 50% of the project costs.

We reserve the right to conduct any necessary audit, verification, and discovery as deemed necessary to ensure that CASF funds are spent in accordance with any Commission authorizations, and as a basis to promote compliance and enforcement of Commission directives.

## **6. Comments on Proposed Decision**

The proposed decision of Commissioner Rachelle B. Chong in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_ and reply comments were filed on \_\_\_\_\_.

## **7. Assignment of Proceeding**

Rachelle B. Chong is the assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

## **Findings of Fact**

1. Pursuant to D. 07-09-020, parties were provided notice and opportunity to comment as to the merits and manner by which a mechanism could be implemented for eligible parties to qualify for funding to deploy broadband facilities in regions of California that are not currently being served, or that are underserved.

2. Ubiquitous deployment of broadband holds tremendous opportunities for consumers, technology providers, and content providers, and is important to the continued health and economic development in California.

3. Promoting deployment of additional broadband services within areas of California that are underserved or not served at all is consistent with universal



service policies aimed at enhancing deployment of advanced services and bridging the “digital divide” as articulated in Pub. Util. Code §§ 709(c) and (d).

4. The creation of a California Advanced Services Fund would provide an effective tool to promote additional broadband services in regions that are not served or are underserved consistent with Pub. Util. Code § 709(c) and (d).

5. The California Advanced Services Fund will complement the CHCF-B, and help to promote universal service goals, but will not divert or transfer CHCF-B funds as the CASF funds collection will be allocated separately from the CHCF-B.

6. The funding of broadband infrastructure in high cost areas where there may be market failure may be the best way to take into account dramatic advances in telecommunications and information technologies and services, while ensuring the continued effectiveness of the universal service policies set forth by the Legislature.

7. Broadband deployment in California has a direct impact on economic output and employment.

8. Redesignating half of the B-Fund surcharge contribution for the CASF is the best way to fund the CASF as an initial matter. Carriers may use the same surcharge line on customer bills for both the CHCF-B and the CASF. In the future, the Commission could decide to establish a separate CASF surcharge but we find it is not necessary at this time as the CHCF-B mechanism is available and works well.

9. The programs covered by Section 270, *et. seq.* cover a myriad of topics and issues. The Commission has taken both formal and informal actions to adapt the programs to changed circumstances due to advances in technology and other

factors have led to changes, including expansions of the programs since they were created.

10. The Commission has authority under Article XII of the California Constitution and Public Utilities Code § 701 to establish the California Advanced Services Fund.

11. Providing funding pursuant to Pub. Util. Code §§ 701 and 709 for deployment of broadband facilities in unserved and underserved high cost areas of California is necessary to meet the objectives of universal service.

12. Legislative direction recognizes that broadband services are and will be used to deliver universal telephone service now and in the future.

13. The Legislature and Governor have both clearly proclaimed the importance of high-quality telecommunications and advanced information and communication technologies.

14. All funds will be collected and appropriated consistent with Legislative direction related to existing universal service programs.

15. It is appropriate to dedicate limited funding into the deployment of broadband facilities in unserved and underserved high cost areas of California.

16. The California Advanced Services Fund will accelerate broadband deployment in high cost areas more rapidly than market forces alone.

17. The initial allocation to the California Advanced Services Fund will be \$100 million collected over a two year period beginning on January 1, 2008.

18. An application process would be an appropriate procedural vehicle for seeking funding support for a proposed area that is currently unserved or underserved by broadband services.

19. Commission staff will hold a workshop to develop the application process, and final evaluation criteria, with the final evaluation criteria to be publicly noticed at least 45 days before the first CASF applications are due.

20. The initial deadline for the filing of applications by parties seeking CASF grants will be of June 2, 2008.

21. California Advanced Services Fund allocations shall be limited to a "telephone corporation" as defined under Pub. Util. Code § 234.

22. Applicants shall be required to submit the following data to the Commission, for each proposed broadband project, subject to appropriate confidentiality provisions:

- A. Description of applicant's current broadband infrastructure and map of current service area by census block group;
- B. Description of proposed broadband project plan for which CASF funding is being requested, including download and upload speed capabilities of proposed facilities. Minimum speed standards shall be 3 MBPS download and 1 MBPS upload.
- C. Geographic locations by census block group where broadband facilities will be deployed. Boundaries of the specific area to be served by the project, with map by census block group, along with a verifiable showing that the area is unserved or underserved;
- D. Estimated number of potential new broadband subscribers.
- E. Schedule for deployment, with commitment to complete build out within 18-24 months of the grant of the application. Schedule shall identify major construction milestones that can be verified by Commission staff.
- F. Proposed budget for the project, with a detailed breakdown of cost elements, and including source, amount, and availability of matching funds to be supplied by applicant, and the CASF grant amount requested. At least 60% matching funds must be supplied by applicant.

G. Proposed retail price per MBPS for new broadband service.

H. Period of commitment to offer broadband services to all households within the service area of the project, and

I. Financial qualifications to meet commitments.

23. Recipients must also offer a basic voice service to customers within the service area of the broadband deployment subject to the CASF grant.

24. For purposes of awards of California Advanced Services Fund support, we expand the definition of qualifying “basic service” to include any form of voice-grade service, including that offered through a wireless or VoIP service.

25. A single broadband project shall consist of a group of contiguous CBGs in which service is to be offered.

26. A 3 MBPS/1MBPS speed standard is adopted as the benchmark for evaluating applications.

27. A broadband project must be completed within 24 months to receive California Advanced Services Fund awards.

28. Adequate assurance of the applicant’s financial qualifications sufficient to assure the Commission of its ability to complete the project shall be submitted with the application or obtained by the Commission prior to the award of any project under the California Advanced Services Fund.

29. California Advanced Services Fund awards will not be restricted only to those areas currently designated as “high cost” for purposes of basic service support.

30. We shall not restrict the eligible areas for California Advanced Services Fund awards only to the major ILEC service territories currently covered by the B-Fund.

31. As a condition of receiving a California Advanced Services Fund award, the recipient should, for a five-year period, offer broadband service to any

residential household or small commercial business within the service territory covered by the deployment.

32. Evaluation of requests will consider the prices at which applicants propose to offer broadband service and award will be conditioned on the applicant honoring voluntary pricing commitments.

33. California Advanced Services awards will only be provided for authorized capital projects on approved broadband deployment projects, and shall not be used to pay for general operating or maintenance expenses.

34. Administration of the disbursement of California Advanced Services Funds is delegated to the Commission Staff to be administered consistent with the payment schedules and conditions herein.

35. California Advanced Services Fund recipients will be subject to specific audit or related verification requirements to verify that funds are spent in accordance with Commission requirements.

### **Conclusions of Law**

1. Existing statutes provide the requisite authority for the Commission to support funding of broadband deployment under the approach adopted in this order.

2. Encouraging deployment of broadband through a CASF program will help to promote universal service goals, but is not a diversion or transfer from the CHCF-B to separate fund.

3. Article XII of the California Constitution and Public Utilities Code § 701 provide sufficient legal authority for the Commission to establish the California Advanced Services Fund.

4. Limited funding for deployment of broadband facilities in unserved and underserved areas of California is necessary to meet the objectives of universal service and is within the prescribed purpose of Pub. Util. Code §§ 701 and 709.

5. The Legislature and Governor have found the availability of high-quality telecommunications and advanced information and communication technologies important for the future prosperity of California.

6. The funds to be used by the CASF will be collected as part of the redesignated CHCF-B and CASF surcharge beginning on January 1, 2008. Carriers may use the same surcharge line on customer bills for both the CHCF-B and CASF.

7. Pub. Util. Code §§ 270(b) and 270(c) do not prohibit the expansion of existing programs.

8. As the CASF is not a transfer or diversion of funds to another fund or entity but is an expansion of an existing program, the limitations of § 270 do not apply.

9. California Advanced Services Fund allocations shall be limited to a “telephone corporation” as defined under Pub. Util. Code § 234.

10. The definition of qualifying “basic service” for the purposes of the California Advanced Services Fund is modified to include any form of voice-grade service, including that offered through a wireless or VoIP service.

11. Subject to the final evaluation criteria, the Commission may award California Advanced Services Fund support to any certificated entity that proposes to build broadband infrastructure anywhere in the state.

12. The criteria for evaluation should be competitively neutral.

**O R D E R****IT IS ORDERED** that:

1. An allocation of \$100 million is hereby designated for support of broadband deployment projects in accordance with the principles and processes under the “California Advanced Services Fund” (CASF) program, as adopted herewith.

2. On and after January 1, 2008, this CASF allocation shall be collected using the same surcharge mechanism as the CHCF-B, with the collected funds allocated half to the CASF and half to the CHCF-B.

3. A process is hereby adopted for the filing of applications by qualified telephone corporations to seek funding available through the California Advanced Services Fund, as set forth in the appendix hereto.

4. Eligible parties are hereby authorized to file applications, due on June 2, 2008, to request funding for broadband deployment in accordance with the standards, and selection criteria set forth in this order.

5. A separate showing shall be required for each proposed broadband project. For this purpose, a single broadband project is defined as deployment encompassing a single contiguous group of CBGs. Applicants may seek funding for more than one project within a single application, but must provide separate supporting documentation for each project.

6. Responses to applications shall be due 30 business days after applications are filed, except that responses that present a counteroffer to meet the proposed broadband commitment under different terms shall be due 45 business days after the application is filed.

7. CASF applications filed after June 2, 2008 will be accepted, but will be reviewed under a lower priority, and subject to the availability of remaining

CASF funds after awards are made under applications that meet the June 2, 2008 filing deadline.

8. Applications for CASF grants and disbursement of funds for that purpose shall be made pursuant to the standards and criteria adopted herein.

9. Consistent with the timelines discussed in Finding of Fact 19, Communications Division staff shall convene a technical workshop at which parties will be provided the opportunity to give input on the development of scoring criteria. Following the workshop, further guidance will be provided to parties concerning how specific selection criteria will be scored.

10. CASF funding shall be limited to entities with a certificate of public convenience and necessity (CPCN) that qualify as a “telephone corporation” as defined under Pub. Util. Code § 234 and required under §§ 276 and 739.3.

11. If an entity has an application pending for approval of a CPCN application for to provide service as a “telephone corporation,” the entity may file an application for a CASF grant subject to subsequent approval of the CPCN to provide service as a “telephone corporation.”

12. For purposes of qualifying for a CASF grant, an eligible “telephone corporation” must also offer voice grade service along with the proposed provision of broadband.

13. The definition of qualifying “basic residential service” for purposes of administering the CASF program is hereby expanded to include any form of voice grade service, such as VoIP and wireless.

14. Each applicant shall bear the responsibility to assess whether a proposed project is in an area that is currently not being served based on the standards adopted herein. In the event that an applicant erroneously asserts that a proposed project will cover an area that is currently unserved, opposing parties



will have the opportunity to challenge such assertions by filing responses to the application.

15. As a condition of receiving a CASF award, the recipient must make a commitment for a five-year period to offer broadband service to any residential household within the service territory covered by the deployment.

16. CASF recipients will be subject to specific audit or related verification requirements to verify that funds are spent in accordance with Commission requirements.

17. An initial disbursement of 25 % of the total CASF award shall be made upon Applicant's submission to Commission staff of a progress report, with supporting documentation showing that Applicant has completed 25 % of the total approved broadband project. Supporting documentation shall be provided in the form of invoices, and other relevant documentation, showing the expenditures incurred for the project. Staff may require additional supporting information or verification from the applicant as a basis for disbursement of CASF funds.

18. Subsequent CASF disbursements shall be made upon Applicant's submissions of documentation showing completion of 50%, 75% and 100%, respectively, of the total project.

19. Failure to comply with the conditions of approval of any CASF grant, or to complete the broadband project in accordance with the terms of approval granted by the Commission, shall constitute grounds warranting forfeiture of the CASF grant and reimbursement of such grant to the Commission.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

### INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated November 20, 2007, at San Francisco, California.

/s/ ANTONINA V. SWANSEN

Antonina V. Swansen

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\*\*\*\*\* SERVICE LIST \*\*\*\*\*

**Last Updated on 16-NOV-2007 by: AJH  
R0606028 LIST**

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